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Libel and Slander - Exemplary Damages - The Requirement of Actual Damages

Dale W. Moench

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restrictions on the landowner's use of his property. Therefore, this extension should not be followed by this state.

EDWIN ODLAND

LIBEL AND SLANDER—EXEMPLARY DAMAGES—THE REQUIREMENT OF ACTUAL DAMAGES—In a libel action the trial Court of Ramsey County ruled that the publication in issue was libel per se. The jury returned a verdict for the plaintiff assessing actual damages at \$0 and punitive damages at \$5,000. Defendant's motion for judgment notwithstanding the verdict was granted, and on appeal the Minnesota Supreme Court *held*: punitive damages in a libel per se action are recoverable in the absence of actual damages. *Loftsgaarden v Reiling*, 126 N.W.2d 154 (Minn. 1964)

Generally, punitive damages are awarded where factors aggravating the plaintiff's injury are present; those usually considered are fraud, willfulness or wantonness, oppression, malice, or violence.¹

The great weight of authority requires actual or compensatory damages as a prerequisite to the recovery of punitive or exemplary damages,² since the defendant may not be punished for his wrongful conduct alone.³ Therefore, there must be a separate cause of action for compensatory damages, exemplary damages being mere incidents to that cause of action.⁴ More often than not, under this theory, there must be an actual award of compensatory damages.⁵ North Dakota, along with the great weight of authority, deems

1. OLECK, DAMAGES TO PERSONS AND PROPERTY § 29 (rev. ed. 1961).

2. See *e.g.*, *Manhattan Credit Co. v. Skirvin*, 228 Ark. 913, 311 S.W.2d 168 (1958). *Barber v. Hohl*, 40 N.J. Super. 526, 123 A.2d 785 (App. Div. 1956). *Haydel v. Morton*, 8 Cal. App. 2d 730, 48 P.2d 709 (1935).

3. OLECK, *op. cit. supra* note 1, § 275D.

4. *Tyra v. Board of Police & Fire Pension Comm'rs.*, 32 Cal. 2d 666, 197 P.2d 710 (1948).

5. *Manhattan Credit Co. v. Skirvin*, *supra* note 2 (distinguishing between actual and nominal damages and holding that the latter will not support an award of punitive damages).

it necessary to prove the loss and grant a compensatory award.⁶

In some jurisdictions recognizing compensatory damages as a prerequisite to the recovery of exemplary damages, the emphasis is placed on the wrong done to the plaintiff rather than the actual awarding of compensatory damages.⁷ Therefore, the basic requirement is met by showing that the injuries to the plaintiff must have entitled him to compensation,⁸ and exemplary damages may be awarded under this theory even though compensatory damages were not actually awarded for one reason or another.⁹

Some jurisdictions accept nominal damages as a basis for the recovery of exemplary damages,¹⁰ and others do not.¹¹ Where the compensatory damages are not capable of measurement,¹² the rule allowing exemplary damages would seem to be the more justifiable. A strict adherence to the rule of actual damages as a prerequisite would not allow recovery in such a case.

The Federal courts and some states allowing exemplary damages as an independent basis of recovery without requiring actual damages, set forth the theory that these damages neither depend upon, nor bear any relation to the allowance of actual damages.¹³ The fact that exemplary damages, unlike compensatory damages, do not lend themselves to outside or formulistic standards is given as a rea-

6. N.D. CENT. CODE § 32-03-07 (1960) "In any action for the breach of an obligation not arising from contract, when the defendant has been guilty of oppression, fraud, or malice, actual or presumed, the jury, in addition to actual damages, may give damages for the sake of example and by way of punishing the defendant." See *McCurdy v. Hughes*, 63 N.D. 435, 248 N.W. 512, 520 (1933), *aff'd on rehearing*.

7. See *Sterling Drug v. Banatar*, 99 Cal. App. 2d 393, 221 P.2d 965 (1950).

8. See *e.g.*, *Reynolds v. Pegler*, 123 F. Supp. 36 (S.D.N.Y. 1954) *Foster v. Sikes*, 202 Ga. 122, 42 S.E.2d 441 (1947).

9. See *Clark v. McClurg*, 215 Cal. 279, 9 P.2d 505 (1932) *Fauver v. Wiloske*, 123 Mont. 211, 211 P.2d 420 (1949) *Barber v. Hohl*, *supra* note 2.

10. *Udell v. Josephson*, 11 N.Y.S.2d 866 (Sup. Ct. 1939).

11. *Thompson v. Mutual Ben. Health & Accident Ass'n of Omaha*, 83 F. Supp. 656 (N.D. Iowa 1949) see *supra* note 6.

12. See *Barber v. Hohl*, *supra* note 2.

13. *Wardman-Justice Motors, Inc. v. Petrie*, 39 F.2d 512 (D.C. Cir. 1930) *Reynolds v. Pegler*, 123 F. Supp. 36 (S.D.N.Y. 1954) *Purifoy v. Central of Georgia Ry. Co.*, 218 Ala. 11, 117 So. 466 (1928), *Barber v. Hohl*, 40 N.J. Super. 526, 123 A.2d 785 (App. Div. 1956).

son for refusing to require a relationship between them.¹⁴ This is an attempt to prevent a wrongdoer from having actual immunity merely because the injured party is unable to show that there was a measurable injury.¹⁵

Under the view of North Dakota, and the great weight of authority, it is possible for the defendant to escape liability when the plaintiff cannot prove an actual monetary loss. It is submitted that this is not the better rule to follow

DALE W MOENCH

ARMED SERVICES—DEFERMENTS AND EXEMPTIONS—CONSCIENTIOUS OBJECTORS—CONSTITUTIONALITY OF “SUPREME BEING” REQUIREMENT—Convicted of failing to submit to induction in the armed forces,¹ the defendant appealed, asserting he was improperly denied exemption as a conscientious objector because his objections were not dependent upon a belief in relation to a “Supreme Being”, as required by statute.² The defendant had declined to assert a belief in a deity, but convinced authorities he held a sincere religious faith in a purely ethical creed that prohibited him from participating in any form of war. Reversing the trial court, the United States Court of Appeals, 2 Cir., *held*, that in the light of recent decisions by the Supreme Court, a line such as is drawn by the “Supreme Being” requirement between different forms of religious expression can-

14. See cases cited in note 8 *supra*.

15. See *Reynolds v. Pegler*, *supra* note 8, at 38, in which the Court said, “Punitive or exemplary damages are intended to act as a deterrent upon the libeler so that he will not repeat the offense, and to serve as a warning to others. Punitive damages are allowed on the ground of public policy and not because the plaintiff has suffered any monetary damages for which he is entitled to reimbursement; the award goes to him simply because it is assessed in his particular suit. The damages may be considered expressive of the community attitude towards one who willfully and wantonly causes hurt or injury to another.”

1. *United States v. Seeger*, 216 F. Supp. 516 (S.D.N.Y. 1963).

2. Universal Military Training and Service Act, 62 STAT. 604 (1948), 50 U.S.C. App. § 456(j) (1958). The act provides: “Nothing contained in this title shall be construed to require any person to be subject to combatant training and service who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual’s belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.”